

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15762 of Ahmad Ghamarian, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 320.3) to allow a dry cleaning pick-up store in the basement and first floor in an R-3 District at premises 910 New Hampshire Avenue, N.W. (Square 28, Lot 123).

HEARING DATE: December 9, 1992

DECISION DATE: February 3, 1993

ORDER

SUMMARY OF EVIDENCE:

1. The subject property is located on the west side of New Hampshire Avenue between Eye and K Streets and is known as premises 910 New Hampshire Avenue, N.W. It is zoned FBOD/R-3.

2. The property is irregular in shape with a frontage of 16.291 feet along New Hampshire Avenue, a depth of 53.808 feet along the northern property line, and a depth of 76.333 feet along the southern property line.

3. The property is improved with a two-story plus basement rowhouse-type structure which was built in the early 1900s as a single-family residence.

4. The first floor and basement of the subject premises were last used for a dental office from 1983 to 1991. The second floor is used for residential purposes. The first floor and basement are currently vacant.

5. The area surrounding the subject site is developed with a mixture of residential and commercial uses. Immediately north of the site is an existing 7-Eleven store. Immediately south of the site is a medical office building.

6. The applicant purchased the subject property in 1983. At the time of purchase, the property was zoned R-5-D. The first floor and basement were used for dental offices by the applicant's brother and the second floor was used for residential purposes for the applicant and his brother. The dental office was later operated by another dentist who purchased the practice from the applicant's brother. Since the property became vacant in 1991, the applicant has attempted to rent the first floor and basement for either dental office or residential use. The applicant did not attract any interest in use of the space for dental offices and made minor alterations to the space, such as removing sinks from

examination rooms, to make the space attractive for residential use. The applicant received numerous inquiries and showed the property to numerous prospective tenants with no success.

7. Pursuant to Zoning Commission Order No. 714, dated April 17, 1992, the property was rezoned from R-5-D to R-3 under the Foggy Bottom Overlay District (FBOD). The FBOD, under Section 1523 provides that legitimate uses not allowed as a matter of right in the R-3 District in existence when the rezoning became effective would be considered as conforming. However, the FBOD District provides that no addition, replacement or expansion of existing buildings or change in use (except to a more conforming residential use other than a dormitory) shall be permitted unless it is in compliance with the requirements of the underlying R-3 District. The underlying R-3 District permits matter of right development of single-family detached, semi-detached and row dwellings.

8. The applicant is seeking a variance from the provisions of the FBOD/R-3 District to allow for the establishment of a dry cleaning pick-up station and shoe repair at the subject premises. The proposed facility would operate from 7:00 a.m. to 11:00 p.m., Monday through Friday, and from 7:00 a.m. to 6:00 p.m. on Saturday. All dry cleaning and shoe repair would be done off the premises. There would be one delivery/pick-up per day by a mini-van. No more than one employee would be at the premises during all hours of operation.

9. The granting of a variance from the use provisions requires a showing that the property is affected by an extraordinary or exceptional situation or condition inherent in the property, that strict application of the zoning regulations will cause undue hardship to the Applicant, and that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.

10. The applicant testified that the subject property is affected by an exceptional or extraordinary condition due to the following:

- a. The property is located between a seven-story medical office building and a convenience store.
- b. The large first floor window is approximately two feet above the sidewalk level and would subject a residential tenant to a loss of privacy and security due to the high volume of pedestrian traffic generated by the adjacent commercial uses.
- c. Because the property is separated from the entrance to the garage of the adjacent medical building by a 12"

thick concrete wall, the first floor is subjected to the vibrating and echoing noise created by vehicles entering and exiting the underground garage of the medical building.

11. The applicant testified that he would suffer an undue hardship if the requested relief is not granted because the property is undesirable for residential use, and despite his efforts to lease the property at fair market value, or below, he has been unable to attract a tenant for the space as a residence or for dental office use.

12. The applicant testified that the proposed use would not create any substantial adverse impacts in that no actual cleaning or shoe repair will take place on the premises; the use would not likely generate more traffic than the use as a dental office; the clientele attracted by the use would generally come from the immediate area and walk to the site, and only one delivery per day would occur in the parking space in front of the property.

13. The Office of Planning, by memorandum dated December 2, 1992, recommended denial of the application. The OP was of the opinion that the applicant has not met the requisite burden of proof for a use variance. The OP was further of the opinion that the proposed use is not in keeping with the FBOD/R-3 District and that the immediate neighborhood would be adversely impacted in terms of noise and increased on-street parking congestion.

14. The Metropolitan Police Department, by letter dated October 7, 1992, offered no opposition to the granting of the application. The MPD was of the opinion that the proposed use would not affect the public safety in the area or generate an increase in the level of police services now being provided.

15. The D.C. Fire Chief, by memorandum dated October 22, 1992, offered no objection to the request. The Fire Chief noted that fire and life safety features required by city codes such as fire alarms, sprinkler systems, standpipes, exits, fire-rated separations, etc. would be considered as part of the building permit application review.

16. The D.C. Department of Public Works, by memorandum dated December 7, 1992, did not support the proposed use of the subject premises. The DPW, based on its field inspection, found a high volume of pedestrians and heavy parking and loading activities generated by the convenience store. The DPW found that the loading space in front of the 7-Eleven is usually occupied between 7:00 a.m. and 6:30 p.m., that truck deliveries frequently block the crosswalk and impede pedestrian flow; and that some patrons park illegally in the southbound lane blocking through traffic.

The DPW was of the opinion that the proposed use would generate more pedestrian and vehicular traffic into an already congested area.

17. Advisory Neighborhood Commission (ANC) 2A, by resolution dated November 30, 1992 and by representative at the public hearing, opposed the granting of the subject application. The issues and concerns expressed by the ANC are summarized as follows:

a. The proposed variance would substantially impair the intent, purpose and integrity of the Zone Plan embodied in the decision of the Zoning Commission to create the Foggy Bottom Overlay District, as set forth in Sections 1521 to 1524 of 11 DCMR.

b. There are no extraordinary or special conditions attached to the applicant's property that would result in peculiar or exceptional difficulties to or exceptional and undue hardship upon the applicant.

c. The operation of the proposed dry cleaning pickup store would exacerbate the traffic problem at and around the 7-ELEVEN, which the Board of Zoning Adjustment addressed in Order No. 15526 renewing the variance for operation of that store.

d. There would be no convenience for residence as a result of the operation of the proposed dry cleaning pickup store, given that there are already at least two such stores operating within two blocks of the site.

18. The Foggy Bottom Historic District Conservancy, by representative at the public hearing, opposed the granting of the application. The Conservancy was of the opinion that the property did not have the characteristics necessary to meet the criteria of Section 3107.2 and that the granting of a variance would substantially impair the intent and purposes of 11 DCMR, Sections 1521 to 1524. The Conservancy noted that the property was completely surrounded by R zoning categories and was not adjacent to a commercially zoned area. With respect to using the front of 910 New Hampshire Avenue, N.W. for parking, the Conservancy noted that that would require additional curb cuts which are specifically discouraged under the provisions of the Foggy Bottom Overlay District. In addition, a curb cut in front of the property would significantly reduce the size of the loading zone necessary to serve the 7-ELEVEN store.

19. A nearby resident testified at the public hearing in opposition to the application. The record contains several letters including a letter from Councilmember Jack Evans, opposing the

granting of the application. The opposition is generally summarized as follows:

- a) Neighbors oppose the use of the subject premises for any commercial purpose.
- b) The proposed use is contrary to the purpose of the FBOD.
- c) There is no reason that the property cannot be used residentially.

20. The Board left the record open at the conclusion of the public hearing to afford the applicant an opportunity to submit additional arguments in support of his request for a use variance and for responses from the parties to that submission.

21. On January 15, 1993, the applicant submitted a memorandum in support of the requested variance. The memorandum generally reiterates the applicant's arguments presented at the public hearing with respect to the criteria for granting variance relief. In addition, the applicant responded to the concerns of the opposition with respect to parking and traffic, and submitted additional evidence of his attempts to lease the subject property. Responses to the applicant's submission were received from ANC-2A on January 25, 1993 and from Steve Timlin on January 25, 1993.

FINDINGS OF FACT:

1. The Board finds that the applicant has not met the burden of proof necessary to justify the granting of a use variance.
2. The Board finds that the applicant's inability to lease the subject premises as a dental office or residence for a period of approximately one year is not sufficient to demonstrate that the premises cannot reasonably be used for such purposes as demonstrated by the history of the use of the structure for exactly those purposes.
3. The Board finds that the applicant further failed to establish that the subject property could reasonably be adapted to other conforming uses permitted in the R-3 District.
4. The Board finds that the downzoning of the subject property from R-5-D to R-3 did not affect the permitted use of the site for residential purposes, including the use of a portion of the structure for offices for a dentist residing on the premises. The Board notes that a "clinic" use would have been permitted in the R-5-D District and precluded in the R-3 District. However, the Board further notes that the applicant has not indicated that a "clinic" use ever existed at the subject premises.

5. The Board finds that the use of the adjacent properties, while not necessarily desirable neighbors for a residence, existed during a time that the subject property was successfully occupied in conformance with the zoning in the area.

6. The Board finds that the applicant is unable to establish that the site is affected by an exceptional or extraordinary condition inherent in the property nor that the strict application of the Zoning Regulations would result in an undue hardship.

7. Because the applicant is unable to meet these threshold criteria, the Board declines to specifically address the issues of whether the granting of the requested relief would result in substantial detriment to the public good or impair the intent of the Zoning Regulations and hereby concurs with the opinion of the OP and ANC 2A relative thereto.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing through substantial evidence of an undue hardship upon the owner arising out of some exceptional or extraordinary condition of the property so that the property cannot be used for purposes for which it is zoned. The Board further must find that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map.

The Board concludes that the applicant has not met the requisite burden of proof. The Board concludes that the abutting nonresidential uses do not create an exceptional condition inherent in the subject property. The Board concludes that the subject property has previously been occupied by conforming uses, therefore, the strict application of the Zoning Regulations will not result in an undue hardship upon the owner.

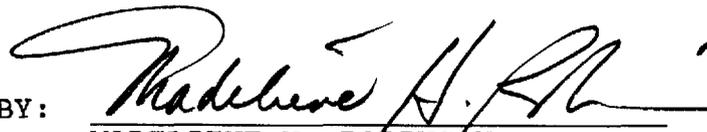
The Board further concludes that the requested relief cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Board has accorded the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is hereby DENIED.

VOTE: 3-0 (Sheri M. Pruitt, Paula L. Jewell and Angel F. Clarens to deny; John G. Parsons and Carrie L. Thornhill not voting, not having heard the case).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 30 1994

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

ord15762/SS/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15762

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 30 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

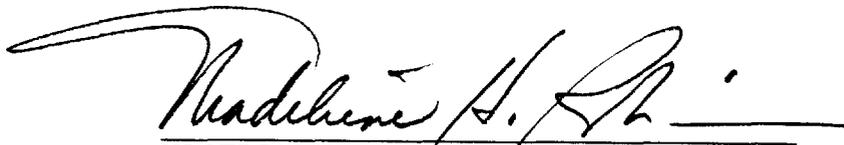
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MADELIENE H. ROBINSON
Director

DATE: AUG 30 1994